THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.7602 of 2007
Date: 02-11-2007

Between:
M/s. Sri Chamundeswari Oil Agencies,
HPC Dealer, Atmakur village & Mandal, Nellore Dist.
rep.by it's Proprietor R.Ankaiah

Petitioner

And

M/s. Hindustan Petroleum Corporation Ltd., and
others

Respondents

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W.P.No.7602 of 2007

ORDER:

1. The writ petitioner is a retail vendor of petroleum products. He has been awarded dealership by the first respondent-Hindustan Petroleum Corporation Limited. When the outlet of the petitioner has been inspected, certain irregularities were noticed and consequently after an enquiry, the Chief Regional Manager of the first respondent had passed an order on 06-09-2006 terminating the Dealership Agreement by and between the petitioner and the first respondent-Petroleum Corporation. In terms of the Marketing Discipline Guidelines-2005, an appeal would lie against the orders passed by the competent authority terminating the dealership agreement and accordingly writ petitioner had availed the same. The appeal has been heard and it came to be decided by the Executive Director-Retail of the first respondent corporation by his order dated 23-03-2007. The writ petitioner has called in question the orders passed by the primary authority namely, the Chief Regional Manager and the orders as confirmed by the appellate authority, namely, the Executive Director of the Corporation in the above writ petition.

2. The learned standing counsel for the first respondent-Corporation Sri P.V.Sanjay Kumar has raised objection with regard to

maintainability of the writ petition by pointing out that clause 68 of the Dealership Agreement had provided for an alternative mechanism for resolution of the dispute by and between the parties and such an alternative dispute resolution mechanism cannot be characterized as not an efficacious remedy and therefore, the writ petitioner shall not be permitted to by-pass the said mechanism. Clause 68 of the Dealership Agreement relied upon by the standing counsel reads as under:

> "Any dispute or difference of any nature whatsoever or regarding any right, liability, act omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Managing Director of the corporation or of some officer of the corporation who may be nominated by the Managing Director. The dealer will not be entitled to raise any objection to any such arbitrator on the ground that the Arbitrator is an officer of the corporation or that he has to deal with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any of the matters in dispute or difference. In the event of the Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Managing Director as aforesaid at the time of such transfer, vacation of office or inability to act for any reason, the Managing Director as aforesaid at the time of such transfer, vacation of office or inability to act, shall designate another person to act as an Arbitrator in accordance with the terms of the agreement such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Managing Director or a person nominated by such Managing Director of the Corporation as aforesaid shall Act as Arbitrator hereunder the Award of the Arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of the Arbitration Act,1940 or any statutory modification of or, re-enactment thereof and the rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

> The Award shall be made in writing within six months after entering upon the reference or within such extended time not exceeding further four months as the sole Arbitrator shall by a writing under his own hands appoint."

3. The said clause has provided that the dispute has to be resolved by way of arbitration by the Managing Director himself or through some Officer of the Corporation who may be nominated by the Managing Director. The apprehension entertained by the writ petitioner in this regard is that when once the appeal itself has been examined by fairly a senior level Executive of the Corporation namely, the Executive Director, the writ petitioner can hardly expect any other officer who could be subordinate in rank to that of the Executive Director of the Corporation to have so much of independence and impartiality to correct the error committed by the Executive Director.

4. The learned standing counsel has quickly corrected any such misapprehension entertained by the writ petitioner by pointing out that generally it is the Managing Director who will be the sole Arbitrator and in case the Managing Director finds unable to spare time for entertaining the arbitration proceedings himself he would ensure that no officer who will occupy a rank subordinate to that of the Executive Director of the Corporation would be appointed as the sole Arbitrator. The learned standing counsel would also point out that if the Managing Director of the Corporation himself entertained the arbitration proceedings or he chooses to entrust arbitration proceedings to be conducted by any of the Directors of the Board of Directors of the Corporation, it can reasonably be presumed of the required fairness and impartiality on their part for

securing the resolution of the dispute. Therefore, I dispose of this writ petition by directing the Managing Director to entertain the dispute for resolution through the mechanism of arbitration either by himself or by choosing such an officer of the Corporation who will not occupy any rank which is construed as inferere to the rank of the Executive Director-Retail, who acted as the appellate authority in the instant case. The petitioner is granted 15 days time from today to lodge his formal claim petition before the Managing Director and from the date of receipt of such a claim petition, the arbitration proceedings be concluded as quickly as possible, at any rate, within a maximum period of six months.

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NOOTY RAMAMOHANA RAO,J

02-11-2007

Note:
C.C. in a week

B/o.
Stp